

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 10 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOSE LUIS PLAZA, Jr.,

Defendant-Appellant.

No. 23-10009

D.C. No. 4:21-cr-03296-SHR-EJM-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Scott H. Rash, District Judge, Presiding

Submitted June 26, 2023**

Before: CANBY, S.R. THOMAS, and CHRISTEN, Circuit Judges.

Jose Luis Plaza, Jr. appeals from the district court's judgment and challenges his guilty-plea conviction and 60-month sentence for smuggling goods from the United States, in violation of 18 U.S.C. § 554(a). Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Plaza's counsel has filed a brief stating that there are no

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

grounds for relief, along with a motion to withdraw as counsel of record. We have provided Plaza the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

Our independent review of the record pursuant to *Penon v. Ohio*, 488 U.S. 75, 80-81 (1988), discloses no arguable grounds for relief on direct appeal as to Plaza's conviction, 60-month custodial sentence, and 3-year term of supervised release. Concerning the conditions of Plaza's supervised release, we find no arguable issues except as to special conditions 1 and 4, which involve an unconstitutional delegation of authority under *United States v. Nishida*, 53 F.4th 1144, 1151-55 (9th Cir. 2022). We accordingly vacate those conditions and remand for the district court to modify them in a manner consistent with *Nishida*. As to all other issues, we affirm.

Counsel's motion to withdraw is **GRANTED**.

AFFIRMED in part; VACATED in part; and REMANDED with instructions.